

REMARKS

Prior to this Amendment, claims 1-2, 5, and 32 were allowed, claims 3-4, 8-9, 26, and 29 were rejected, and claims 27-28 and 30-31 were objected to as being dependent upon a rejected base claim.

By this amendment, Applicants amend claim 3, leaving claims 1-5, 8-9, and 26-32 pending and under Examination. Support for amended claim 3 can be found in paragraphs [010] - [012] of the substitute specification, and no new matter enters by amendment.

Claim Rejections under 35 U.S.C. § 112, First Paragraph

In the Office Action dated December 19, 2003, the Office withdrew the Allowability of claims 3-4, 8-9, and 26-31 in view of a rejection under 35 U.S.C. § 112, first paragraph, written description. The Office alleged that claims 3-4, 8-9, 26, and 29 recited no limitation to the function of the encoded polypeptides, and that the claims were therefore drawn to a large and variable genus of polynucleotides. (Office Action at Page 2.) Although Applicants believe that the claims were definite as written, Applicants have inserted the phrase “encoding a vatE” into claim 3. Applicants submit that this modifying phrase also applies to claims 4, 8-9, 26, and 29, all of which depend from claim 3.

The Office also rejected claims 3-4, 8-9, 26 and 29 under 35 U.S.C. § 112, first paragraph, alleging that the specification does not enable polynucleotides encoding polypeptides of unknown function. (Office Action at Page 3.) In particular, the Office

alleges that the claims "broadly encompass not only vatE genes, but any polynucleotides hybridizing to polynucleotides encoding SEQ ID NO: 1." As stated previously, in an effort to facilitate prosecution, the phrase, "encoding a vatE" has been inserted into claim 3. Applicants thus respectfully request the withdrawal of the 35 U.S.C. § 112, first paragraph, rejections.

Claim Objections

The Office found claims 27-28 and 30-31 objected to as being dependent upon a rejected base claim, but otherwise allowable. Applicants submit that the amendment to claim 3 places all base claims in condition for allowance. Accordingly, Applicants request withdrawal of this objection.

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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